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## THE NEW PROBATION LAW OF MICHIGAN.

NOTHING connected with the work of a circuit judge demands more thoughtful consideration or occasions him more anxiety than the punishment to be meted out to the men and women who have violated the laws of the state. In almost every other matter there is an opportunity for review by an appellate court. Where litigants differ widely from the decision of the circuit court it is altogether likely that there will be an appeal and the matter will be finally adjudicated by another court. But from the sentence given to one who has plead guilty, or has been found guilty after a jury trial, there is practically no appeal except to the pardoning power of the Executive.

The Legislature has defined by statute the several crimes against persons and property and the punishment is fixed within certain definite limits. To determine, either on confession, or after a jury trial, that a certain person is guilty as charged, is a matter which requires but little attention. But to fix the amount of punishment which shall best promote the good of the individual, as well as the good of the public, is not by any means so simple. This is true because in the words of one who has studied the subject carefully, "we are dealing, not with acts, but with actors; not with crimes but with men; not with abstractions, but with human hearts, minds and lives." Knowing that his judgment is in most cases final, a judge cannot approach sentence day without feeling the responsibility and the sacredness of his office. A young man is before the court who may be obliged to serve six months or six years in prison, on the spoken word of the judge. It is possible that the young man may never be fitted to enter society again, it is possible that six months of work and discipline may be just what he needs, it is possible that six years of hopeless toil may unnerve and unman him and send him out a derelict. It is an enormous responsibility, but one which the judge must face alone.

Since the days when the laws of England provided the death penalty for more than an hundred crimes, a great change has come over the attitude of Government toward the criminal offender. It has been clearly demonstrated that extreme severity does not eradicate or even diminish crime. Not only were valuable lives sacrificed during those days but the spirit of crime increased.

The change from England of the sixteenth century to America of the twentieth century is very great. There was in those days a democratic equality in the treatment of criminals which was dis-

treisingly simple. Practically the only distinction which a criminal received was in the manner of his death.

In most of the states the death penalty has been abolished and the Legislatures have given much care and attention in an attempt to make the punishment fit the crime. Recognizing that imprisonment is not a cure for crimes, our Legislature set about to find some method by which, while the public was protected, the individual might be reclaimed. The indeterminate sentence law was a step in that direction and on the whole has worked much good. Men who had committed crimes were allowed to come out of prison after a few months or years and before hope was dead. The question naturally arose—can society be safeguarded if these men or some of them make good without serving a term in prison? In some cases sentence was suspended from term to term of court, but this method was found to be unsatisfactory.

Probation laws were thus evolved. There is nothing new in the principle, it is as old as the desire of the human heart to have another chance. But the practical application of this probation principle to the criminal laws, is a new and interesting experiment. It seems to have been inaugurated in Massachusetts and since then to have spread to every state in the union. Its growth has been opposed, step by step, but it is safe to say now that probation laws have come to stay. The real question seems to be, how far shall the state superintend and direct the life and conduct of the offender who is at large, under restraint, in the community.

The Legislature of 1903 passed an Act which recognized and made effective the principle of probation but it failed to provide adequate means for the care of the offender during the term of his probation. This Act has on the whole worked well and has been of service in establishing the principle. Our supreme court has recognized the legality of this statute in the case of *People v. Dudley*, 173 Mich. 389. This case decided that after being placed on probation and during its continuance the offender may at any time, for a violation of the terms thereof, be cited to appear in court to receive sentence. The offender has no constitutional right to the aid or advice of an attorney. He is not entitled to an examination in open court, to determine whether he has violated the terms of his probation. The court says, "when he pleaded guilty to the information filed against him, he might have been sentenced at once. It is only by the mercy of the law that he was not. The violation of the terms of the probation is not necessarily a crime, and it is not treated by the law as a crime, but rather as a breach of contract. When the person convicted is granted rights thereunder he agrees to the terms

and understands that for certain misconduct his probation will be terminated, nor is the proceeding for carrying out this feature of the law in any sense a criminal prosecution."

Because the Act of 1903 has worked well, and because there was a demand that its provisions be extended and enlarged, a new probation Act was passed by the Legislature of 1913 which provides for some radical changes. The principle of probation is extended to all municipal and police courts. This is a distinct advance. From the municipal and police courts the offenders are, in a majority of cases, sentenced to jails which are little better than nurseries of crime. The offenders are mostly young men who have either become disorderlies through drink and the accompanying associations, or have committed petty larceny or because of some domestic trouble have beaten their wives or have failed to support them. It is safe to say that confinement in the county jail seldom effects a cure for this class of offenders.

From the circuit courts and the recorder's court the offenders may, in most cases, be sent to our State Prisons. At these institutions the work and discipline often effects a permanent change for the better and a young man may come out of the prison a well disposed citizen. The extension of the probation system to municipal and police courts was a much needed change in the law. These courts will now be able to place the offender under a competent officer for a term of years. So far as I have learned there is no criticism of this change in the law.

The change in the law which marks a new era in probation work, in this state, and which subjects the law to most criticism, is the creation of an entirely new set of paid officials. Commissions and officers have increased so rapidly of late years that any additions must be justified on the grounds of economic necessity. The appointment of these officers is not a matter of sentiment, it must be justified on economic grounds.

The old law allowed the County Agent a fee for investigating the previous record and conditions of the offender and reporting to the court. There was no provision by which compensation could be given for care or supervision during the probation period. The results from such a system were very unsatisfactory. Occasionally a County Agent or some other person could be found who would take the time to keep in touch with the young man under his charge. Then good results followed in most cases. But with most of the men placed on probation the care and supervision was nominal and the results were positively bad. The probationer would, perhaps, feel that he had obtained his freedom by deceiving the court and

that he could, while nominally under restraint, follow his inclinations and do with impunity the things which had been prohibited. Every day that he lived this life of deception he approached nearer to the life of the habitual criminal, and the system which was designed to prevent crime actually encouraged it. Any system of probation which leaves the offender without constant and careful supervision is a failure and worse than immediate prison sentence.

The new probation law requires the appointment by the Governor, of a chief probation officer for each judicial circuit and certain additional assistant probation officers. These men are recommended by the court but, under our constitution, could not be appointed by the circuit judge. The several municipal and police courts have power to appoint their own probation officers. These officers are paid a salary either by the Board of Supervisors or by the municipality within which such officer has jurisdiction. All these officials are in addition to the County Agents who have charge of the juvenile delinquents, but the County Agent may be, and often is the probation officer. By this one Act it will be seen that more than fifty salaried officials have been brought into existence.

The only justification for this prodigal creation of paid officials is the economic necessity for such action. A large majority of those who come before the court are first offenders and most of them are between sixteen and twenty-four years of age. It is a well known fact that a boy who has had decent training and fair instruction may, during this period of his life, be guilty of some more or less serious offense. To give every one of these young men a prison sentence, or to set them free without proper supervision and restraint, may lead to complete ruin. In addition to the offenders who have had a fair start, there are a multitude who have never had any chance and who find themselves up against a prison sentence when they have never really counted the cost of a life of crime.

When the young offender comes before the court for the first time, the fact that his evil deeds have been discovered and the fact that he is sure it don't pay, tend to produce in him a repentant mood. To give such a youth his freedom, on probation, without a master hand to guide him, with simply a lecture on how to be good even while young from the court, is worse than useless. What this young man needs is the firm supervision of a man of character and experience, a combination of father confessor and master of discipline. Once on a time a dear, kindly old lady, complained to the commanding officer of the regular army that the common soldiers were deficient in morals. The officer replied that, "It is not expected, that

even the Government can obtain deep chested, red blooded men, with all the cardinal virtues, for thirteen dollars per month." Neither can the public obtain the services of men of character and experience, who will give their time to reclaiming youth, without money and without price.

The young man who is placed on probation is under restrictions more onerous and binding than have ever been imposed upon him. Actions not in themselves criminal are forbidden, he must break old friendships and form new associations. His friends know all these things and in their lack of wisdom are little better than Job's comforters. His enemies know and do all they can to get him into trouble. His employer knows and looks on him with some suspicion. He has many incentives to go wrong. What he needs most is a friend and guide who, without gush or maudlin sentiment, will keep him in view, not from month to month but from day to day.

The probation officer must be an exceptional man and then he must be prepared to give time and thought to the job of reclaiming the youth under his charge. Not every one of these offenders can be built into an average, self-supporting citizen, they are the odds and ends of humanity. But for every one of them who can be reclaimed the economic saving to the community is tremendous. In the first place the cost of his jail or prison service has been saved. In the second place, and more important, you have returned to the community a wage earner, perhaps a home builder, an asset of the state instead of a liability. If the probation officer can reclaim one in five, the saving to the state has more than justified the expense.

In most of the circuits there will be, in a short time, a large number of probationers and the law allows a charge to be made by which the offender shall pay to the community one dollar per month. The payment of this sum is, in most cases, a good thing for the probationer and will go far toward paying all expenses.

Some form of probationary system has come to stay, it is inconceivable that we go back to the old system. There has not been sufficient time to determine how the peculiar provisions of this Act will work out. Already the Attorney-General has been asked to give his interpretation regarding certain provisions of this new law. In his opinion the probation officer must receive a certain fixed salary instead of a per diem for services rendered. In his opinion the Governor must appoint both the Chief Probation officer and such assistants as are recommended. In his opinion these appointments can be made by the Governor, only, after the recommendation by the Circuit Judge. The law will during the next few years be thoroughly tested and some changes may be required. Such changes

as will be made are likely to be in the direction of selecting more carefully trained probation officers, and giving them more authority to supervise the conduct of the offender. It is not unlikely that the Board of Corrections and Charities may become a sort of clearing house where all probation records will be kept. These records would be of great value to the court and to the probation officer in determining what disposition should be made of each case.

We must admit that the past system of treating criminals has been a wasteful failure. Extreme harshness has been followed by stubbornness and degradation. There is no irreclaimable criminal class. Hopeless years in prison have, in many cases, rendered the prisoner, who was after all a man, incapable of resuming his normal functions as a citizen. This is distinctly the age of conservation. To give the first offender another chance, under careful supervision, is not only humane but economically worth while. We are spending millions each year to conserve the soil, the water power and the forests, it is absolutely certain that we can afford to spend some money for the effective reclaiming of damaged human beings.

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*Lansing.*